

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: July 25, 2005

Opposition No. **91152940**

Sinclair Oil Corporation

v.

Sumatra Kendrick

**Andrew P. Baxley, Interlocutory Attorney:**

On April 26, 2005, the Board issued an order to show cause why opposer's failure to file a brief on the case should not be considered a concession of the case under Trademark Rule 2.128(a)(3).

In response thereto, opposer contends that, despite using several standard docketing procedures to ensure proper docketing of incoming materials, it did not receive the Board's April 4, 2004 order herein and was thus unaware of the trial schedule herein. Accordingly, opposer asks that the Board reopen discovery and reset all applicable dates herein. Applicant did not file a brief in response thereto.

If a show cause order is issued under Trademark Rule 2.128(a)(3), and the plaintiff files a response indicating that it has not lost interest in the case, the show cause order will be considered discharged, and judgment will not be entered against plaintiff for failure to file a main

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brief. Opposer's response clearly indicates that opposer has not lost interest in the case. Accordingly, the order to show cause is hereby set aside.

To the extent that opposer's response to the show cause order incorporates a motion to reopen discovery, the Board finds that opposer's failure to receive the April 8, 2004 order constitutes a showing of excusable neglect sufficient to reopen discovery.<sup>1</sup> See *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993); Fed. R. Civ. P. 6(b); *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997). Accordingly, opposer's motion to reopen discovery is hereby granted.

Discovery and trial dates are reset as follows.

DISCOVERY PERIOD TO CLOSE:	<b>10/21/05</b>
Plaintiff's 30-day testimony period to close:	<b>01/19/06</b>
Defendant's 30-day testimony period to close:	<b>03/20/06</b>
15-day rebuttal testimony period to close:	<b>05/04/06</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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<sup>1</sup> The Board notes, however, that opposer could have determined that the April 8, 2004 order had been issued with regard to the two motions to compel that it filed on September 10, 2003 by reviewing the record in this proceeding online at <http://ttabvue.uspto.gov/ttabvue/>.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.